

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF UINTAH,
STATE OF UTAH.

THE UINTAH RIVER IRRIGATION CO.
(a corporation).
Palintiff.

v.

CLARA VAN, a minor Indian allottee,
E. RASMUSSEN, ARREEP, an indian
Allottee, BOYCE ARREEP, a minor Indian
Allottee, NEPHI WINCHESTER, an Indian
allottee, REBECCA ARROWCHISS, a minor Indian
Allottee, ALICE ARROWCHISS, an Indian Allottee,
-----ARROWCHISS, an Indian Allottee,
-----Quiup, an Indian Allottee, and
CAPTAIN C. G. HALL, Capt. 5th U. S. Cavalry U. S. A.,
and acting Indian Agent, Uintah and Ouray Agency, Utah.
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FINDINGS OF FACT.

This cause having come on regularly for hearing, upon the Amended Complaint herein filed, and the Amendment to said Amended Complaint, on the 29th day of November, 1911 Thomas W. O'Donnell, Esq. appearing as counsel for the Plaintiff and Hiram E. Booth, U. S. Attorney, and William M. McCrea, Assistant U. S. Attorney, representing the Indian Defendants and each of them, and appearing for Captain C. G. Hall, as Indian Agent of the Uintah and Ouray Agency, Utah, and his now successor, H. J. Brees, the now Acting Indian Agent for the Uintah and Ouray Agency, Utah; and in this action the defendants having been served with process, due, legal and regular, and each of them making their appearance by and thru the office of the U. S. Attorney and the Assistant U. S. Attorney, save as to E. Rasmussen; and he having failed to appear and answer the Plaintiff's Amended Complaint and the amendments thereto filed herein, and his time for answering having expired and no answer or Demurrer having been filed, the default of the said defendant, E. Rasmussen, in the premises having been duly entered according to law, and a jury having been expressly waived, the cause was tried before the court; whereupon, witnesses were sworn and examined and the evidence being closed the cause was submitted to the court for consideration and decision, and after due deliberation thereon, the court delivers and files its findings and decisions in writing, and orders that judgment be entered in accordance herewith.

FINDINGS OF FACT

That, the Uintah River Irrigation Co. is now and at all times has been, a corporation duly organized and existing under and by virtue of the laws of the State of Utah.
That the purpose for which said corporation was organized and incorporated, was to appropriate, buy and sell water for irrigation, power, domestic and other beneficial

purposes, and to deliver, hold, own and store the said waters, as the exigencies of the occasion may require, and to construct, own, buy and sell, and maintain, drains, canals, laterals, reservoirs, pipelines, headgates, flumes and other works necessary for the said purpose.

That the said Plaintiff herein in conformity with the articles of its Incorporation, and in full compliance with the Statutes of the State of Utah relative to the appropriation of waters heretofore unappropriated in the said State, did on or about the 17th day of April, A. D. 1905, make due and proper application, for the appropriation of twenty-five cubic feet per second of water, said water to be taken from the Deep Creek and Uinta Streams, in Uintah County, Utah, and thereafter to be applied for irrigation and other purposes on those lands embraced in Townships 2 South, Ranges 1 and 2 East of the Special Uinta Meridian. That due and proper notices and publication of the said application was made, and that thereafter and on to-wit the 21st day of October, A. D. 1905 the said application for 25 cubic feet per second of water, was allowed and approved, and the same was granted to the said The Uintah River Irrigation Company, this plaintiff.

That in conformity with its articles of incorporation, and in full compliance with the statutes of the State of Utah relative to the appropriation of water heretofore unappropriated in said state, it did on or about the 8th day of September, A. D. 1909, make out a proper application for the appropriation of ten (10) cubic feet per second of water, said water to be taken from an unarmed wash in the Green River drainage system, in Uintah County, Utah, and thereafter to be applied in townships two (2) South and Two (2) East of the Special Uintah Meridian; that due and proper notice and publication of said application was made, and thereafter, on to-wit, August 4th, 1910, the said application for ten cubic feet per second of water was allowed and approved and the same was granted to said the Uintah River Irrigation Company, this plaintiff by the State Engineer for the State of Utah. That said water so appropriated has been used and applied to a beneficial use, to-wit, the irrigation of lands belonging to this plaintiff in said townships, and said water was appropriated to be carried, and has been carried, through the canal and ditch of the plaintiff described in its said amended complaint. That the only method and means of carrying and applying said water to said beneficial use is the ditch and canal of the plaintiff described in said amended complaint, which said ditch is located, and has been built, across the lands in said amended complain described.

It is further found that the plaintiff entered into a contract, which is still in full force and effect, with The Moffat Irrigation and Development Company, a

corporation, to carry all such waters as should be appropriated by said The Moffat Irrigation and Development Company through the ditch and canal of the plaintiff along the line described in said amended complaint of the plaintiff; and the waters of the Moffat Irrigation and Development Company so agreed to be carried by this Plaintiff will fill said ditch and canal to its full capacity after carrying its own water so appropriated as aforesaid by it.

That this plaintiff corporation caused to be surveyed its certain canal and road, over and thru the certain parcels and allotments of land belonging to the Defendants herein named, and that said survey commenced at the point of diversion on Whiterocks Creek, a tributary and feeder of the Uintah River, and at a point located on the east bank of the said Whiterocks Creek, in the N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 23, Township 1 South, Range 1 East, U. S. Meridian; whence the S. W. corner of said Section bears S. $40^{\circ}30'$ West, 1530 feet, and running thence in a general southeasterly direction over, thru and across the lands of the defendants herein.

That the lands so sought to be irrigated comprise an acreage of about 5000 acres, and that all of said land has no other means of irrigation or receiving water thereon, save and excepting from the said the Uintah River Irrigation Company, by and thru the canals which have been constructed by it for the purpose of carrying the waters appropriated.

That all of said lands are arid and worthless for agricultural and farming purposes without such water.

That the route proposed as shown and constructed is the most feasible and practical one that can be chosen, for the supplying with water those certain lands mentioned heretofore, and that the taking of the several strips and parcels of allotted lands as hereinafter more particularly described is necessary for the proposed construction, use and benefits of the said canal and road. That the said road and canal so now constructed, are a public use and a public necessity.

That the said canal and road has now, and at this time, been completed, and the plat and survey therefor calls for land fifty feet in width, and that such width of land is actually necessary for the construction and the proper maintenance of the proposed road and canal.

That the lands and right of way sought to be condemned and acquired in conformity with the laws of the State of Utah, are as follows:-

(a) A strip of land 50 feet in width, being 25 feet on either side of a meander line over and across the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ Section 23, Tp. 1 South, Range 1 East U. S. Meridian, said described tract belonging to Clara Van, a minor Indian Allottee, but whose parents as plaintiff is informed and believes are Philip Van and Maggie Van;

and the land so sought to be condemned herein will be a strip 297 feet long and 50 feet wide and containing 0.34 acres.

(b) A strip of land 50 feet wide, being 25 feet on either side of a meander line, over and across the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 26, Tp. 1 S. R. 1 E. U. S. M., said described tract being claimed by one Ephriam Rasmussen, one of the defendants herein under his Homestead Entry No. 925 Uintah Indian Series. Said strip of land being 1370 feet long and 50 feet wide, and containing 1.57 acres.

(c) A strip of land being 50 feet wide, of which 25 feet is on either side of a meander line, through, over and across the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 26, Tp. 1 S. R. 1 E. U. S. M., said described tract being owned by - - - - - Arreep, whose first and given name to the plaintiff is unknown, an Indian allottee. Said strip of land sought to be condemned being 1570 feet long and 50 feet wide, and containing 1.8 acres.

(d) A strip of land 50 feet in width, being 25 feet on either side of a meander line, through, over and across the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, Sec. 25, Tp. 1 S. R. 1 E. U. S. M. said described tract being a portion of an Indian allotment, and belonging to Boyce Arreep, a minor Indian allottee, whose guardian is unknown to this plaintiff. Said strip of land sought to be condemned being 921 feet long and 50 ft. wide and containing 1.06 acres.

(e) A strip of land 50 feet wide, being 25 ft. on either side of a meander line through, over and across the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Sec. 36, T. 1 S. R. 1 E. U. S. M. said described tract being an Indian allotment, and belonging to Nephi Winchester, an Indian. Said strip of land herein sought to be condemned being 1009 ft. long and 50 ft. wide, and containing 1.16 acres.

(f) A strip of land 50 ft. wide, being 25 feet on either side of a meander line, through, over and across the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Sec. 36, Tp. 1 S. R. 1 E. U. S. M., said tract of land being an Indian allotment, awarded to and owned by Rebecca Arrowchiss, a minor Indian, whose guardian to this plaintiff is unknown, and the said land herein sought to be condemned by this plaintiff through the property of this said allottee if 600 ft. long and 50 ft. wide, being 0.69 acres. It being understood however, that a perpetual easement be granted and had through the said creek or gulch that now traverses the said land, for the purpose of conveying the waters, all or part, that now belong or hereafter may be acquired by the Plaintiff herein.

(g) A strip of land 50 ft. wide, being 25 ft. on either side of a meander line, through, over and across the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, Sec. 36, T. 1 S. R. 1 E. U. S. M. Said land being an Indian allotment and belonging to Alice Arrowchiss, an Indian allottee, one of the defendants herein, and the said strip hereby sought to be condemned is 859 feet long by 50 feet wide and contains 0.98 of an acre.

(h) A certain strip of land through the allotment made to Arrowchiss, whose first and given name is unknown, which said strip will be 50 ft. in width, same being 25 feet on either side of a certain line of meander, through, over and across the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 35, T. 1 S. R. 1 E. U. S. M. Said Arrowchiss being an Indian and the land sought to be condemned being a strip 621 feet in length and 50 ft. in width, and containing 0.71 of an acre.

(i) A strip of land 50 feet wide, being 25 ft. on either side of a certain meander line through, over and across Lots 3 and 4 of Sec. 1, T. 2 S. R. 1 E. U. S. M. being 1040 feet in length and 50 feet in width and containing 1.19 acres; and likewise a strip of land of the same width and similarly situated as to a meander line, through, over and across Lot 4 of said Section 1; 610 feet in length by 50 feet in width and containing 0.68 of an acre. Said land enumerated herein in paragraph (i) belonging to - - - - Quiup, an Indian allottee, whose other and first name is unknown.

The respective areas of the several strips or parcels of land to which title is hereby sought to be acquired by the Plaintiff corporation herein from the respective owners and claimants thereof, are as follows:

(a) Clara Van	0.34 acres.
(b) E. Rasmussen	1.57 "
(c) - - - -Arreep	1.8 "
(d) Boyce Arreep	1.06 "
(e) Nephi Winchester	1.16 "
(f) Rebecca Arrowchiss	0.69 "
(g) Alice Arrowchiss	0.98 "
(h) - - - -Arrowchiss	0.71 "
(i) - - - - Quiup	1.87 "
Total	<u>10.18 acres.</u>

All of which lands are subject to condemnation proceedings and are, and ought to be condemned, for the purposes mentioned in the Amended Complaint, and are so hereby condemned, with title to the Plaintiff herein.

That prior to the trial of this cause, the attorneys of record for the plaintiff and defendants stipulated that appraisers of the said land sought to be condemned, should be appointed, and the plaintiff designated herein as its appraiser, John MacAndrews, and the defendants designated as their appraiser, C. G. Hall, and that thereafter, and on the 22nd day of September, 1910 they filed with the Clerk of the District Court of Uintah County their findings of damages, as follows:

Clara Van,
NW $\frac{1}{4}$ of SW $\frac{1}{4}$

Sec. 23, T. 1 S. R. 1 E.

\$3.00

Allotment of Arreep SE $\frac{1}{4}$ of SE $\frac{1}{4}$	Sec. 26, T. 1 S. R. 1 E.			\$60.00
Boyce Arreep SW $\frac{1}{4}$ of SW $\frac{1}{4}$	25	1	1	47.00
Nephi Winchester, NW $\frac{1}{4}$ of NW $\frac{1}{4}$	36	1	1	60.00
Rebecca Arrowchiss, SW $\frac{1}{4}$ of NW $\frac{1}{4}$	36	1	1	30.00
Arrowchiss, NE $\frac{1}{4}$ of SE $\frac{1}{4}$	35	1	1	30.00
Quiup, N $\frac{1}{2}$ of NW $\frac{1}{4}$	1	2	1	2.00
John Quipp, NW $\frac{1}{4}$ of NE $\frac{1}{4}$	1	2	1	1.00
Clark App Newcowree, NE $\frac{1}{4}$ of NE $\frac{1}{4}$	1	2	1	1.00
				<u>\$234.00</u>

Being a total of Two Hundred Thirty-four (\$234.00) Dollars.

And the Court herein finds generally that the matters set forth in the said Amended Complaint and the amendments thereto are true, in every particular. And as

CONCLUSIONS OF LAW

the Court finds that the right of way sought to be condemned as prayed for, is a right and proper action, and that a Decree herein be prepared in accordance with these Findings of Fact, subject only to the payment of the sum of \$234.00 to the Clerk of the District Court of the Fourth Judicial District, in and for Uintah County, Utah, for the use and purposes of the defendants named in the said amended complaint as designated in the amount set forth in this findings of Fact and Conclusions of Law; and the said Clerk shall deliver the moneys so received by him to the then Acting Indian Agent of the Whiterocks and Ouray Agency, Utah, for the use and benefits of the said defendants as aforesaid, deducting therefrom the costs of this action, and shall take his receipt therefor, which shall be incorporated as a part of the Judgment roll in this cause.

Such payment to be made by plaintiff within sixty days after rendition of these Findings and the signing of the Decree, and that upon the deposit of the said moneys in the sum herein mentioned, that title to the said lands herein condemned should, and shall become final, absolute and irrevocable to this plaintiff.

Done in open court at Vernal, Utah, this 29 day of November, 1911.

J. E. BOOTH, Judge.